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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/822,049	04/10/2004	Ronald John Rosenberger		2242

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Ronald Rosenberger
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Newtown, PA 18940

EXAMINER

MAKI, STEVEN D

ART UNIT	PAPER NUMBER
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1733

DATE MAILED: 03/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/822,049	Applicant(s) ROSENBERGER, RONALD JOHN	
	Examiner Steven D. Maki	Art Unit 1733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>102804</u> . | 6) <input type="checkbox"/> Other: ____. |

Art Unit: 1733

- 1) The disclosure is objected to because of the following informalities: On page 1 line 3, --under 35 USC 119(e)-- should be inserted after "the benefit".

Appropriate correction is required.

- 2) Claims 1-20 objected to because of the following informalities: In claim 1 line 6, "tire is a rest" should be --tire is at rest--. Appropriate correction is required.

- 3) The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- 4) Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claims 1-20, the scope of "novelty scent or fragrance" (emphasis added), "unique aroma comprises a salient, distinctive, and marketable feature of said vehicle tire" (emphasis added), and "said tire is in normal use" (emphasis added) is unclear. One of ordinary skill in the art is not reasonably appraised of the scope of protection afforded by this language. It is unclear for example which scents are *excluded* by this language and which scents are *included* by this language.

In the claim 6, "intended for and allows" renders the scope of the claim unclear. For example, it is unclear if claim 6 is limited to the tire having the described "novelty plug or insert" or if claim 6 merely requires the tread to have grooves, which have the capability of the tire to "accommodate" the "novelty plug or insert". In other words, is claim 6 limited to the combination of a "tire" and "novelty plug or insert"?

Art Unit: 1733

As to claims 8 and 9, it is unclear if a "void" or a "tire" is being claimed since claim 6 is directed to a tire instead of merely a void.

As to claims 10-20, these claims are ambiguous. It is unclear if a "novelty plug or insert" or a "tire" is being claimed since claim 6 is directed to a tire instead of merely a "novelty plug or insert". In claims 14 and 17, it is unclear how "permutation" affects the scope of the claim. In claim 18, it is unclear how "may be installed" affects the scope of the claim. In claim 19, the scope of "the customization of said vehicle tire to comprise endless variants and permutations" is unclear. Also, there is no antecedent basis for "the installation" in claim 19. In claim 20, it is unclear how "is made available and/or sold separately offered aftermarket item or plurality of aftermarket items" affects the scope of this claim. Do claims 18-20 continue to require the "tire" and the "plug or insert"?

As to claims 11 and 12, it is unclear if an "erodible material composition" or a "tire" is being claimed since claim 6 is directed to a tire instead of merely an "erodible material composition".

5) Claims 2, 3 and 14 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.

Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. --.

Claims 2 and 3, which recite "or in place of", broaden claim 1 and thereby fail to further limit claim 1.

Art Unit: 1733

Claim 14 broadens claim 10 by apparently making the limitations of claim 10 such as color and erodible optional.

6) The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7) The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8) **Claims 1 and 5 are rejected under 35 U.S.C. 102(a), (b) as being anticipated by Japan 873 (JP 2002-114873).**

Japan 873 discloses a pneumatic tire for a passenger car having a size such as 185/65R14. The tread of this tire comprises particles containing perfume. Japan 873 teaches that the perfume containing particles are exposed with tread wear and that the aroma is emitted for a long time. Japan 873's tire inherently has a scent when at rest, since Japan 873 teaches that the aroma is emitted for a long time. See abstract and machine translation of Japan 2002-114873. As to claim 5, Japan 873's tire inherently has a color (black).

Art Unit: 1733

9) Claims 1 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Japan 003 (JP 7-69003).

Japan 003 discloses a pneumatic tire having a size such as 195/60HR14.

Perfume is provided in at least the outer surface region of the tire. Japan 003 teaches including the perfume in the rubber composition for the tread or spraying the perfume on the tread. Japan 003 teaches that a favorable scent is emitted from the tire at all times and, in particular, teaches that the scent is emitted when the tire is displayed at a store. Since Japan 003 teaches that the perfume may be kneaded into the rubber composition, wear of the tread must expose more perfume. As to claim 5, Japan 003's tire inherently has a color (black).

10) Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Japan 873 or Japan 003 in view of Berliner (US 5278141).

Each of Japan 873 and Japan 003 disclose a tire containing a perfume so that the tire can emit a scent. Japan 873 suggests emitting perfume during wear of the tire. Japan 003 teaches emitting perfume at all times (e.g. at rest in a store).

As to claim 2, it would have been obvious to one of ordinary skill in the art to use both a perfume and a pheromone as the perfume in the tire or Japan 873 or Japan 003 since Berliner suggests (1) using both perfumery odorant and a pheromone in a perfume to make the perfume more appealing and (2) using perfume in a variety of products (col. 7 lines 30-52).

11) Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japan 873 or Japan 003 in view of Williams (US 6220199).

Art Unit: 1733

Each of Japan 873 and Japan 003 disclose a tire containing a perfume so that the tire can emit a scent. Japan 873 suggests emitting perfume during wear of the tire. Japan 003 teaches emitting perfume at all times (e.g. at rest in a store).

As to claims 3 and 4, it would have been obvious to one of ordinary skill in the art to provide the tire of Japan 873 or Japan 003 with a wear warning means containing visible "wear warning viscous solution" since Williams teaches providing a tire with gel tubes containing a visibly detectable colored liquid such that the gel tubes are embedded in the tire adjacent to the tread section so as to provide a visual warning when the tire tread has worn below a predetermined level.

12) Claims 3-11 and 13-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japan 873 or Japan 003 in view of at least one of Coben (US 2272891), Japan 908 (JP 11-151908) and French 340 (FR 1498340).

Each of Japan 873 and Japan 003 disclose a tire containing a perfume so that the tire can emit a scent. Japan 873 suggests emitting perfume during wear of the tire. Japan 003 teaches emitting perfume at all times (e.g. at rest in a store).

As to claims 3-11 and 13-20, it would have been obvious to one of ordinary skill in the art to provide the tire of Japan 873 or Japan 003 with grooves and colored inserts in the grooves in view of at least one of Coben, Japan 908 and French 340 wherein (1) Coben suggests placing endless colored rubber elements ("O" rings) in the grooves of a tire tread and holding the colored rubber rings in the grooves using tension to provide the tire with a distinctive color scheme (page 1 lines 22-26), (2) Japan 908 suggests locating colored members 6 in grooves of a tire tread (either by inserting

Art Unit: 1733

premanufactured rings in the grooves or pouring colored material in the grooves) to improve the fashionableness of the tire (abstract, machine translation) and (3) French 340 teaches locating a colored indicator (e.g. colored rubber or tearable cell containing coloring agents) in the groove of a tire to achieve visual monitoring of the degree of wear of the tire (see translation).

As to claims 3, 4 and 13, "wear warning" relates to intended use. In any event: French 340 teaches a colored wear warning indicator.

As to claims 6-8, note the specific colored insert and its location in a groove as suggested by Coben, Japan 908 or French 340.

As to claim 9, French suggests two different colored rubber materials in a groove. In any event: it would have been obvious to provide at least two colored rubber rings in a groove since (1) Japan 908 suggests using different colored rings for grooves of a tire tread to improve fashionableness and optionally (2) it is taken as well known / conventional in the tire tread art to improve wet traction of the tire by providing the tread with a wide groove having a width greater than 10 mm.

As to claim 10, "removable" and "erodible" are relative terms, which fails to define structure not suggested by the applied prior art. For example, Coben's colored rubber ring is more erodible than steel. Also, Coben's ring is removable since it is merely held in the groove by tension.

As to claims 4, 5, 11 and 13, it would have been obvious to include a scent in the colored insert for a tire tread suggested by at least one of Coben, Japan 908 and

Art Unit: 1733

French 340 in view of Japan 873 or Japan 003's suggestion to include a perfume in the tread of a tire to provide the tire with a desired fragrance.

As to claims 14 and 15, each of Coben, Japan 908 and French 340 suggest a colored rubber insert.

As to claim 16, Japan 908 suggests locating a colored insert in a groove by pouring.

As to claims 17 and 18, at least one of Japan 908 and French 340 suggest a rubber insert having two differently colored sections.

As to claims 18 and 20, each of Coben, Japan 908 and French 340 teach that the colored insert may be installed after the tire is made.

13) Claims 4, 5, 11 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japan 873 or Japan 003 in view of at least one of Coben, Japan 908 and French 340 as applied above and further in view of Korea (KR 2004029611 as evidenced by Derwent abstract).

As to claims 4, 5, 11 and 13, it would have been obvious to provide the colored rubber insert wear indicator suggested by French 340 with a scent in view of Korea's suggestion to include fragrant material in a wear indicating layer of a tire tread. Korea is available as prior art under 35 USC 102(a) because (1) its publication date (4-8-04) is before applicant's filing date (4-10-04) and (2) claims 4, 5, 11 and 13 are not entitled to the benefit of the filing date of applicant's provisional application 60/463,653. Claims 4, 5, 11 and 13 describe subject matter (e.g. viscous solution) not described in the provisional application.

Art Unit: 1733

14) Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Japan 873 or Japan 003 in view of at least one of Coben, Japan 908 and French 340 as applied above and further in view of Stack (CA 2212021).

As to claim 12, it would have been obvious to provide the colored insert for the groove of a tread with reflective particles since Canada suggests providing reflective particles on a strip in a groove of a tire tread to improve safety at night.

Remarks

15) The remaining references are of interest.

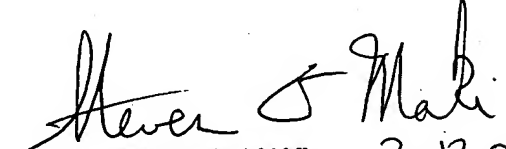
16) No claim is allowed.

17) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven D. Maki whose telephone number is (571) 272-1221. The examiner can normally be reached on Mon. - Fri. 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (571) 272-1226. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Steven D. Maki
March 12, 2006


STEVEN D. MAKI
PRIMARY EXAMINER
3-12-06